FIRST DIVISION
September 25, 2017

No. 1-17-1071

IN THE INTEREST OF SAVANNAH S., a minor	)	Appeal from the
	)	Circuit Court of
(People of the State of Illinois,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 16 JD 1799
v.	)	
	)	
Savannah S., a minor,	)	The Honorable
	)	Terrence V. Sharkey,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's dispositional order committing respondent to the custody of the Department of Juvenile Justice is affirmed where the dispositional hearing complied with section 5-750 of the Juvenile Court Act (705 ILCS 405/5-750 (West 2016)).

¶ 2 Respondent was adjudicated delinquent and findings of guilt were entered for the offenses of aggravated battery and battery. The circuit court entered a "straight commit" order committing respondent to the Department of Juvenile Justice (DJJ) until she reached the age of 21. Respondent appeals the circuit court's commitment order. On appeal, respondent argues that this matter should be remanded for a new dispositional hearing because the circuit court failed to comply with section 5-750(1)(b) of the Juvenile Court Act (Act) (705 ILCS 405/5-750 (West

2016)) before committing respondent to the DJJ. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On August 12, 2016, the State filed a petition for adjudication of wardship against respondent. The petition alleged that on May 2, 2016, respondent, age 17, committed aggravated battery with a dangerous weapon, aggravated battery on a public way, and battery against Shalaya R. The following facts were introduced at respondent's delinquency hearing.

¶ 5 Shalaya testified that she and respondent had lived in the same building located at 5441 South May Street for two and half years, although respondent no longer resided at that address. On May 2, 2016, around 7:12 p.m., Shalaya was standing inside a bus stop cubicle when she was struck on the back of her head with a padlock tied to a shoestring. Shalaya turned around and saw respondent holding the padlock. Shalaya dropped her backpack, and respondent then hit Shalaya in the face. Respondent said, "Oh, you fought my sister, now fight me," before hitting Shalaya multiple times with the padlock. Respondent's brothers, Jalen and Malakai, were present. When Shalaya fought back against respondent, Jalen and Malakai started hitting Shalaya. Shalaya testified that at one point, respondent was holding her neck and pressing her face against a fence when Malakai punched her in the face. Jalen was pulling Shalaya's head down by the hair while respondent continued to hit her with the padlock and Malakai continued to punch her in the face. The fight lasted a few minutes until a car stopped and a man came out to help.

¶ 6 Shalaya identified a video recording of the fight that was taken by the wife of the man who got out of his car to help. Shalaya had seen the video and said it was a fair depiction of what occurred on May 2, 2016. The video was six seconds long and showed respondent striking Shalaya. The video was admitted into evidence, as were photographs of Shalaya's injuries. On

cross-examination, Shalaya admitted to grabbing the lock during the fight and hitting respondent with it.

¶ 7 Officer Reese testified that he was on patrol with his partner on May 2, 2016, around 7:12 p.m. when they were flagged down by a man who told them that a woman had been attacked. Reese observed Shalaya sitting on the curb, crying and upset. He noticed redness and bruising. Shalaya told him that she was attacked by two boys and a girl who then ran to a house at 5441 South May Street. When Reese went to the house, he was allowed to enter after Jalen and Malakai's father arrived. Jalen and Malakai were present, and were placed in custody. Respondent was not at the house.

¶ 8 Respondent testified that she knew Shalaya and that they both had younger sisters. Respondent testified Shalaya and Shalaya's boyfriend had been at respondent's house on May 2, 2016, and that Shalaya left. Respondent stated that she left the house and approached Shalaya, and that the two "had words" at the bus stop before the physical altercation started. She stated that her brothers were just trying to separate the two. Respondent testified that the fight lasted five minutes.

¶ 9 The circuit court found respondent delinquent on the aggravated battery and battery offenses, which merged into an aggravated battery conviction.

¶ 10 On April 5, 2017, the matter proceeded to a dispositional hearing. A Supplemental Social Investigation Report (social report), prepared on March 27, 2017, was submitted by the probation team,[1] which recommended a straight commitment to the DJJ. The report stated that on April 9, 2014, respondent was sentenced on two separate findings of delinquency for robbery and robbery/aggravated battery to five years' probation by Judge Terrence V. Sharkey. On July 13,

[1]Also before the circuit court was a Social Investigation Report prepared on April 6, 2014, and a Supplemental Social Investigation Report prepared on January 22, 2015.

2016, respondent violated the terms of her probation and was sentenced to five years' probation, with first year Intensive Probation Services (IPS) and additional conditions, which included 50 hours of community service, mandatory school, mandatory counseling, drug treatment through DCFS, and "No Gangs, Gungs [*sic*], or Drugs." The social report stated that respondent had 11 violations of probation and that she was not passing her school classes. It further stated that while on IPS, respondent did not comply with curfew or home confinement. Respondent had been "court involved" since 2013, had been held in custody several times, had warrants issued for her arrest, ran from placements, and "simply feels she can do as she pleases."

¶ 11 In addition to the social report, the circuit court heard evidence in aggravation and mitigation. The State noted that because respondent was on probation at the time of the offense of aggravated battery with a deadly weapon, her conviction was elevated to a Class 2 felony. Respondent had been placed on probation three times and had violated her probation at least five times. After being placed on IPS on July 13, 2016, respondent had two violations of probation (violations of restrictive curfew and absences from a set place of residence with whereabouts unknown), two electronic monitoring warrants, and a juvenile arrest warrant. Furthermore, respondent admitted to smoking marijuana every day and was not taking the medications prescribed to her to treat her bipolar and apathetic mood disorder. Finally, the State asserted that respondent had exhausted all the services provided to her. The State informed the circuit court:

> "At the Chicago center, this minor can receive inpatient substance abuse treatment programs which she is in need of after admitting that she smokes two to three blunts per day, mental health services, medical services. At the Harrisburg location she could receive also substance abuse treatment, diagnosis and evaluative services as well as special education services."

The State requested that respondent be sent to the DJJ on a straight commit for both violating her probation and for the delinquency findings in this case. The State contended that secure confinement was appropriate so that respondent would no longer commit robberies and aggravated battery with a deadly weapon against members of the community. The State also asked that a five year probation disposition in another case be terminated unsatisfactorily based on the violation of probation.

¶ 12 In mitigation, respondent argued that she had been court involved since she was 13-years-old, and was a ward of the Department of Children and Family Services. She argued that despite previous violations of the conditions of her probation, she always went to school. Respondent asked that the court take into consideration her bipolar disorder. She further noted that the incident was not random, but instead involved a person with whom she had a history. Respondent requested probation with additional restrictions. Respondent's guardian *ad litem*, Kelli Ross, joined respondent's request for probation. Ross stated that since May 2016, respondent had been in two foster homes, was attending school and therapy, and had made "some progress."

¶ 13 The circuit court expressed concern about respondent's anger issues and violent tendencies. It noted respondent's "history of going forward and making some progress and then a history of going back and tumbling back." The judge observed that "[i]t has been, I think, about three years since I've had her on probation and I'm not seeing the progress that Ms. Ross sees, the positive progress." The circuit court then made the following findings:

> "I find the following facts. The parents were unable for reasons other than financial circumstances alone to care, protect, and train the minor. It was necessary to ensure the public from the consequences of further criminal activity

> of the minor. And secure confinement is necessary after reviewing the following individualized factors: Her age, her criminal background, review of any results and assessments, educational background. What she can get from the Department of Juvenile Justice I think will meet her needs and requirements; physical, mental, and emotional health and liability [*sic*] of community-based services.
>
> Reasonable efforts have been made to prevent or eliminate the need for the minor to be removed from the home or reasonable efforts cannot, at this time, for good cause shown prevent or eliminate the need for the minor[’s] removal. The minor had already been removed from the home. I’m *** referring back to DCFS placement. Removal from the home is in the best interest of the minor and minor’s family and the public and reasonable efforts were made to locate less restrictive alternatives to secure confinement and were unsuccessful.”

¶ 14 The circuit court entered a dispositional order on which it checked the boxes indicating that secure confinement was necessary following review of the statutory facts, and committed respondent to the DJJ until she reached the age of 21-years-old. Respondent filed a timely notice of appeal.

¶ 15 ANALYSIS

¶ 16 On appeal, respondent argues that this matter should be remanded for a new dispositional hearing because the circuit court failed to comply with section 5-750(1)(b) of the Act (705 ILCS 405/5-750 (West 2016)) before committing her to the DJJ. She contends that the State did not present any testimony or evidence tending to show that efforts were made to find a less restrictive alternative to commitment to the DJJ. Respondent further contends that the circuit court did not consider each of the factors outlined in section 5-750(1)(b) of the Act as they

applied to her. She primarily relies on *In re Raheem M.*, 2013 IL App (4th) 130585 and *In re Justin F.*, 2016 IL App (1st) 153257 to support her arguments.

¶ 17 The State argues that respondent forfeited her argument on appeal by failing to raise any objection below to the circuit court's consideration of the statutory requirements. Respondent acknowledges that she did not raise any objection in the circuit court, but contends that the "issue was preserved for review because a sentencing court's failure to make a mandatory finding under subsection 5-750(1)(b) of the Act meets the second prong of plain error."

¶ 18 We first note that plain error review is a relaxation of forfeiture principles, and is not, as respondent suggests, a method for properly preserving an issue for appellate review. While there is no requirement that a minor file a posttrial motion to preserve an error for appeal, (*People v. Hugo*, 322 Ill. App. 3d 727, 738 (2001)), a minor still must raise an objection in the circuit court (*In re W.C.*, 167 Ill. 2d 307, 323 (1995)). Traditional principles of forfeiture apply to proceedings under the Act. *In re M.W.*, 232 Ill. 2d 408, 430 (2009). Because respondent effectively concedes that she forfeited her argument on appeal, we therefore consider whether either prong of plain error applies.

¶ 19 A forfeited issue may be reviewed under plain error where a "clear or obvious error" has occurred. *Id.* at 431. The first step under plain error review is to determine whether an error occurred. If such an error is found, we may grant relief either (1) if the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the respondent, or (2) if the error is so serious that it affected the fairness of the respondent's dispositional hearing and challenged the integrity of the judicial process, regardless of the closeness of the evidence. See *id.* (citing *People v. Piatowski*, 225 Ill. 2d 551, 565 (2007)). Respondent contends that this case

falls within the second prong of plain error because the circuit court's failure to comply with section 5-750(1)(b) of the Act denied her a fair dispositional hearing.

¶ 20 The parties disagree as to the proper standard of review. Respondent contends that our review is *de novo*, because her challenge on appeal is whether her dispositional hearing satisfied the statutory requirements of section 5-750 of the Act, and thus involves a question of law. See *In re Justin F.*, 2016 IL App (1st) 153257, ¶ 25. The State responds that a circuit court's disposition is ordinarily reviewed for an abuse of discretion, (*In re M.Z.*, 296 Ill. App. 3d 669, 674 (1998)), and that "respondent's argument appears to focus on whether the evidence was sufficient to justify commitment, as opposed to focusing on the sufficiency of the hearing[.]" It is clear, however, that respondent's arguments do not challenge whether the evidence was sufficient to enter a straight commit order to the DJJ, but instead focus on whether the circuit court actually considered the factors set forth in section 5-750 of the Act in reaching its conclusion. We therefore review the circuit court's judgment *de novo*. *In re Justin F.*, 2016 IL App (1st) 153257, ¶ 25; see also *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 45-50 (conducting *de novo* review of whether the circuit court followed the requirements of section 5-750 of the Act (705 ILCS 405/5-750 (West 2012)).

¶ 21 Section 5-750 of the Act provides:

> (1) Except as provided in subsection (2) of this Section, when any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to the Department of Juvenile Justice, if it finds that (a) his or her parents, guardian or legal custodian are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and the best interests of the minor and the public will not

be served by placement under Section 5-740, or it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent; and (b) commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement. Before the court commits a minor to the Department of Juvenile Justice, it shall make a finding that secure confinement is necessary, following a review of the following individualized factors:

(A) Age of the minor.

(B) Criminal background of the minor.

(C) Review of results of any assessments of the minor, including child centered assessments such as the CANS.

(D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability, and if so what services were provided as well as any disciplinary incidents at school.

(E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and if so what services were provided and whether the minor was compliant with services.

(F) Community based services that have been provided to the minor, and whether the minor was compliant with the services, and the reason the services were unsuccessful.

> (G) Services within the Department of Juvenile Justice that will meet the individualized needs of the minor.
>
> (1.5) Before the court commits a minor to the Department of Juvenile Justice, the court must find reasonable efforts have been made to prevent or eliminate the need for the minor to be removed from the home, or reasonable efforts cannot, at this time, for good cause, prevent or eliminate the need for removal, and removal from home is in the best interests of the minor, the minor's family, and the public." 705 ILCS 405/5-750(1), (1.5) (West 2016).

¶ 22 We find that the circuit court followed the requirements of section 5-750(1)(b) of the Act during respondent's dispositional hearing. The circuit court expressly found "that reasonable efforts were made to locate less restrictive alternatives to secure confinement and were unsuccessful." Although the circuit court did not elaborate on the specific efforts that were made to locate less restrictive alternatives to secure confinement, the circuit court expressly considered the probation team's social reports from April 6, 2014, January 22, 2015, and March 27, 2017. The social reports reflected that respondent had been placed on probation three times, and had three violations of probation findings, and was on probation at the time of the offense at issue here. In July 2016, respondent was placed on IPS, after which she incurred two additional violations of probation, two motions to revoke electronic monitoring, and a juvenile arrest warrant. Respondent repeatedly flouted the conditions of her probation, and, as the probation team concluded, "simply feels she can do as she pleases." At the dispositional hearing, both respondent and the guardian *ad litem* requested probation for the delinquency finding in this case.

¶ 23 It is clear from the record that there was evidence before the circuit court that efforts were made to locate less restrictive alternatives to secure confinement. The probation team reports showed that respondent had been placed on probation numerous times prior to the aggravated battery of Shalaya. The same judge that presided over the delinquency and dispositional hearings in this case had previously imposed probation on respondent in connection with two 2014 robbery cases. When respondent violated the terms of that probation, on July 13, 2016, she was given five years' probation with conditions, including first year IPS. The offense at issue here occurred during the first year IPS, less than one year after respondent violated the terms of her probation, resulting in additional probation. The circuit court was clearly aware that probation was available as a less restrictive alternative to confinement. The probation team, however, recommended a straight commit order. At the dispositional hearing, respondent did not identify any less restrictive alternatives to confinement that the circuit court failed to consider, or any other community-based alternatives to confinement that could have reasonably been imposed under the circumstances. The only alternative disposition that respondent requested was probation. The probation team's social reports clearly reflect that probation had been used in the past, and was ineffective. The circuit court considered and rejected probation as an alternative to confinement.

¶ 24 We disagree with respondent that this case is analogous to *In re Raheem M.*, in which we remanded for a new dispositional hearing based on a finding that the circuit court failed to consider less restrictive alternatives to confinement. There, the respondent was found delinquent after the circuit court determined that he committed the offenses of aggravated battery of a teacher, a Class 3 felony, and disorderly conduct, a Class A misdemeanor, following a brawl in a school cafeteria. The respondent had a number of police interactions, but no criminal charges had

ever been filed, and he had no previous commitments to the DJJ. *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 12. Of the five other minors facing delinquency petitions for the brawl, one received probation, one received supervision, and three were dismissed. *Id.* The respondent's counsel argued that counseling could make a serious difference and that he deserved a chance at probation. *Id*. The circuit court noted that the respondent was receiving good grades, but that his behavior was disruptive to himself and to his fellow students, and that he had a history of disciplinary issues at school. *Id.* ¶¶ 12-13. The circuit court acknowledged that it was required to look at alternatives to commitment to the DJJ, but stated, "I don't know that that's possible when you have someone like this. I also think there's a value to a deterrence message to people in this community." *Id.* ¶ 14. We reversed the circuit court's dispositional order committing the respondent to an indeterminate term at the DJJ. We found that the record contained "no evidence regarding efforts to identify a less restrictive alternative to secure confinement, either in the social history report or at the sentencing hearing." *Id.* ¶ 47. And while the circuit court's order stated that "the court reviewed and considered results of assessments of the minor," we observed that "the minor was not evaluated or assessed in any manner to determine whether community-based services could eliminate any perceived need to incarcerate respondent." *Id.* Furthermore, the circuit court's order stated that "the court reviewed community-based services to the minor and compliance with and the outcome of those services," yet "no services were provided to the minor, so he had no opportunity to demonstrate compliance." *Id.* We concluded that the circuit court "failed to follow the mandate of section 5-750 prior to committing respondent to the [DJJ]" because the circuit court "must have before it evidence of efforts made to locate less restrictive alternatives to secure confinement and the court must state the reasons why said efforts were unsuccessful." *Id.* ¶ 50.

¶ 25 The facts in *In re Raheem* are markedly different from the facts here. There, we reversed the circuit court's straight commit order because the circuit court made no meaningful effort to locate less restrictive alternatives to secure confinement for respondent, who had never been court involved, and the circuit court had given no reasons for why efforts to locate less restrictive alternatives were unsuccessful. Here, it is clear that the circuit court was well aware of respondent's court involvement, her repeated violations of court-imposed probation, and that probation had not been successful in deterring respondent from engaging in criminal conduct. The circuit court was aware of alternatives to secure confinement, and was aware that those alternatives had been unsuccessful in the past. The circuit court further found that respondent had been given numerous opportunities to cooperate, but had not.

¶ 26 The situation here is more analogous to *In re Ashley C.*, which involved a minor on her fourth delinquency adjudication who had been repeatedly placed on probation, and a circuit court that was "well-versed on respondent's criminal and social history, was aware of respondent's multiple and diverse evaluations, and was aware of the community-based services that had been provided to respondent and that were still available." 2014 IL App (4th) 131014, ¶¶ 27-28. The record here reflects that the circuit court was well aware of respondent's criminal and social history, of the previous evaluations and services provided, and the continued availability of community-based alternatives to confinement. We conclude that the circuit court considered whether there were alternatives to secure confinement as required by the statute, and that the record reflects the reasons why the efforts to locate alternatives to confinement were unsuccessful.

¶ 27 Next, respondent argues the circuit court failed to consider the factors outlined in section 5-750(1)(b) of the Act as applied to respondent. She contends that the circuit court did not

consider any available community-based services that were appropriate, that there was no evidence about what services would be provided to her in order to achieve her educational goals, and that there was no evidence about what services would be provided to help her with her mental health problems.

¶ 28 Respondent primarily relies on our decision in *In re Justin F.*, 2016 IL App (1st) 153257. There, we found that the circuit court failed to comply with section 5-750(1) of the Act because there was no evidence in the record regarding whether the DJJ would provide services that would meet the individualized needs of the minor, as required by section 5-750(1)(G) of the Act (705 ILCS 405/5-750(1)(G) (West 2014)). *In re Justin F.*, 2016 IL App (1st) 153257, ¶ 30. Because the circuit court failed to consider any evidence regarding the availability of services for the minor, we vacated the circuit court's dispositional order and remanded for a new dispositional hearing in accord with the Act. *Id.* ¶ 31.

¶ 29 Here, the circuit court did consider evidence of the services that would be available to respondent at the DJJ. The State argued that respondent, if sent to a facility in Chicago, could "receive inpatient substance abuse treatment programs which she is in need of after admitting that she smokes two to three blunts per day, mental health services, medical services." The State further argued that, if respondent was sent to a facility in Harrisburg, she could receive "substance abuse treatment, diagnosis and evaluative services as well as special education services." Respondent's continued drug use, her mental health, and her education were all identified in the probation team's reports as issues for which respondent might need services. Respondent did not object to the State's argument, and raised no arguments refuting the State's claims that the identified facilities provided those services. We find that there was evidence

before the circuit court that the DJJ provided services that would meet the individualized needs of the respondent.

¶ 30 In sum, the circuit court considered whether there were alternatives to secure confinement as required by section 5-750 of the Act, and the record reflects the reasons why the efforts to locate alternatives to confinement were unsuccessful. Furthermore, there was some evidence before the circuit court that the DJJ provided services that would meet the individualized needs of respondent. Having found no error, we conclude that the circuit court's dispositional hearing complied with section 5-750 of the Act.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 33 Affirmed.